IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 3436 of 2005
Date of Decision: 30.10.2006

Harbhajan Singh & Ors. ...Petitioners

Vs.

Punjab State Electricity Board & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mohd.Yousaf, Advocate,
for the petitioners
Mr.Ajay Tiwari, Advocate,
for respondent No.1.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against an order passed by the learned Additional Civil Judge (Senior Division), Jalandhar striking off the defence of the petitioner-defendants for not filing the written statement within a period of 90 days.

Though in the order learned court below has taken notice of the fact that number of opportunities have been given to the petitioners herein for filing the written statements and explanation given by the petitioners for not filing the written statement on account of death of some of the defendants was held not to be a valid defence, however, the reasons for striking off the defence as noticed by the learned Trial Court is that the written statement was not filed within 90 days as envisaged under Order 8 Rule 1 of the Code of Civil Procedure and therefore, the defence of the petitioner was struck off.

This view of the learned Court below is contrary to the law laid down by Hon'ble Supreme Court in **Shaikh Salim Haji Abdul Khayumsab Vs. Kumar and Company (2006-1) PLR 284,** wherein it was held that the provisions of order 8 Rule 1 of the Code are merely directory and not mandatory. In this view and in the interest of justice this revision petition is allowed, the impugned order is set aside, the written statement filed by the petitioners is ordered to be taken on record and the learned Trial Court is directed to proceed with the matter in accordance with law, after taking into consideration the written statement filed by the petitioners. However, in view of the fact that number of opportunities were availed of by the petitioners for filing the written statement, therefore, filing of written statement would be subject to payment of Rs.5000/- as costs.

(Vinod K.Sharma)
30.10.2006 Judge
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